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16 INTERNATIONAL

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HUB LAW OFFICES

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF MARIN

19 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
20 INTERNATIONAL, a California not-)
21 for-profit religious corporation;) CHURCH OF SCIENTOLOGY
22 Plaintiffs,) INTERNATIONAL'S MEMORANDUM
23 vs.) OF POINTS AND AUTHORITIES
24) IN OPPOSITION TO GERALD
25) ARMSTRONG'S MEMORANDUM OF
26) POINTS AND AUTHORITIES IN
27) SUPPORT OF MOTION FOR
28) SUMMARY JUDGMENT OR, IN THE
CHURCH OF SCIENTOLOGY) ALTERNATIVE, FOR SUMMARY
INTERNATIONAL, a California) ADJUDICATION OF ISSUES
Corporation; DAVID MISCAVIGE;)
DOES 1 to 100;)
Cross-Defendant.)
DATE: September 9, 1994
TIME: 9:00 a.m.
DEPT: 1
TRIAL DATE: September 29,
1994

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1 INTRODUCTION

2 Defendant Gerald Armstrong has posed for the Court's
3 consideration a procedurally defective motion for summary
4 judgment or summary adjudication¹ which (1) misstates the law
5 concerning fraudulent conveyances by citing standards changed in
6 1986; (2) asserts that a recitation of religious belief can
7 prevent this Court from entertaining a claim for fraudulent
8 conveyance; and (3) attempts to convince the Court that the
9 plaintiff's efforts to collect the debt which Armstrong has
10 incurred is "evidence" of a "religious vendetta" demanding that
11 the Church be barred from the use of ordinary, statutory remedies
12 provided to all citizens.

13 As demonstrated below and in the accompanying Separate
14 Statement of Plaintiff Church of Scientology International in
15 Opposition to Defendant Gerald Armstrong's Motion for Summary
16 Judgment,² Armstrong is not entitled to summary judgment on
17

18 ¹ Among the most obvious procedural defects found in
19 Armstrong's attempt to avoid a trial, he has (1) failed to
20 provide the plaintiff (and, presumably, the Court) with a notice
21 of motion or motion, leaving the church to guess from his
22 memorandum what precise relief he seeks, violating CRC 311(a) and
23 Marin County Rule 2.13(e) and (h); (2) failed to provide
24 plaintiff (and, presumably, the Court) with copies of the non-
25 California authorities cited in his papers, in violation of Marin
26 County Rule 2.2(e); (3) failed to provide the plaintiff (and,
27 presumably, the Court) with a separate statement in support of
28 his claimed alternative motion for summary adjudication, in
violation of MCR 2.13(h); and (4) failed to provide plaintiff
with the referenced Request for Judicial Notice upon which he
bases much of his motion, thus preventing plaintiff from raising
any necessary objection, in violation of MCR 2.13(e)(5) and
2.13(i)(5). Declaration of Laurie J. Bartilson, ¶ 2. These
defects alone warrant denial of the "motion" and the imposition
of sanctions against Armstrong and his counsel, Ford Greene.

² Hereinafter referred to as "Sep.St."

1 plaintiff's complaint, nor is he entitled to summary adjudication
2 of any of his affirmative defenses. The material facts which
3 give rise to plaintiff's claims are disputed, and not ripe for
4 summary adjudication.

5 STATEMENT OF FACTS

6 This is a corollary collection action to a breach of
7 contract action brought by plaintiff Church of Scientology
8 International ("the Church"), presently pending in the Los
9 Angeles Superior Court (Church of Scientology International v.
10 Armstrong, LASC No. BC 052395). [Sep.St. No. 7-1.] The Church
11 seeks to secure, pursuant to the Fraudulent Conveyance Act, Civil
12 Code Section 3439 et seq., substantial assets which Armstrong
13 admittedly conveyed to defendants Michael Walton and the Gerald
14 Armstrong Corporation in August, 1990. [Sep.St.Nos. 1 - 7.] The
15 Church claims that it is entitled to recovery under either of two
16 theories: Either Armstrong diverted his assets "[w]ith actual
17 intent to hinder, delay or defraud" the Church's collections
18 [Civ.Code §3439.04(a)], or Armstrong diverted his assets without
19 receiving any "reasonably equivalent value in exchange for the
20 transfer," and "intended to incur, or believed or reasonably
21 should have believed that he would incur," debts to the Church
22 which were "beyond his ability to pay as they became due."
23 [Civ.Code §3439.04(b)(2)].

24 Armstrong and the Church entered into an agreement in 1986
25 ("the Agreement") which was intended to end a substantial period
26 of litigation between them. [Sep.St. Nos. 1, 7-2.] Armstrong
27 received approximately \$800,000 as part of the settlement.
28 [Sep.St.No. 7-3.] The Agreement required Armstrong to maintain

1 confidentiality concerning "his experiences with the Church of
2 Scientology and any information he may have concerning the Church
3 of Scientology, L. Ron Hubbard or any [related individual, or
4 entities]". [Sep.St.No. 1.] It also provided that breach of the
5 confidentiality agreement would result in liquidated damages in
6 the amount of \$50,000 per breach. [Id.]

7 Armstrong has testified that, on the day he signed the
8 Agreement, he considered that it would be impossible for him to
9 honor the confidentiality provisions. [Sep.St.No. 23.] This did
10 not prevent him, however, from signing the Agreement, accepting
11 the settlement funds, and assuring Church representatives and
12 lawyers that he fully understood the Agreement and agreed with
13 it. [Sep.St.No. 24-1.]

14 Armstrong has also testified that, although he originally
15 intended to try to abide by the Agreement, by the fall of 1989,
16 his intention had completely changed. He has admitted that in
17 the fall of 1989, he decided that he would no longer attempt to
18 comply with the Agreement's confidentiality provisions.

19 [Sep.St.No. 23.] In June, 1992, Armstrong proclaimed,

20 I mean, I have, I have absolutely no intention of
21 honoring that settlement agreement. I cannot. I
22 cannot logically. I cannot ethically. I cannot
23 morally. I cannot psychically. I cannot
24 philosophically. I cannot spiritually. I cannot in
25 any way. And it is firmly my intention not to honor
26 it.

27 [Sep.St.No. 23.]

28 At the same time that Armstrong was deciding to breach the
Agreement, he knew that with each such breach, he incurred a debt
to the Church pursuant to the Agreement's liquidated damages
provision. [Sep.St.No. 24-2.]

1 Armstrong's decision to begin breaching the Agreement
2 occurred when he received a subpoena issued by counsel for Bent
3 Corydon, a plaintiff suing the Church and others. [Sep.St.No. 23,
4 24.] His first steps in breach of the Agreement were cautious.
5 In February, 1990, for example, he petitioned to intervene in the
6 Church's appeal of the underlying case, which was also prohibited
7 by the Agreement. [Sep.St.No. 24.]

8 Before undertaking wholesale activities to aid other anti-
9 Church litigants, speak to the media, and attempt to publish his
10 anti-Church sentiments (all breaches of the Agreement), Armstrong
11 took precautions. He has admitted that in August, 1990, he
12 transferred substantial assets to his friend, lawyer, and
13 roommate, Michael Walton, including a piece of real property,
14 valued at nearly \$400,000; shares of stock in the Gerald
15 Armstrong Corporation ("GAC"), which he valued at \$1,000,000; and
16 \$41,500 in cash. [Sep.St.No. 14.] Armstrong received no money or
17 other consideration from Walton in exchange for these assets.
18 [Sep.St.No. 24-3.] Armstrong continued to live with Walton in
19 the house which Armstrong had given to Walton, his roommate.
20 [Sep.St.No. 24-4.]

21 Not long after the transfer of assets was complete,
22 Armstrong began the substantial series of breaches which comprise
23 the Church's Los Angeles complaint. He provided declarations
24 concerning his past Church experiences to anti-Church litigants
25 Vicki and Richard Aznaran, Joseph Yanny, David Mayo, Larry
26 Wollersheim and Uwe Geertz; testified for another anti-
27 Scientology litigant as an expert witness; worked as a paralegal
28 for three anti-Scientology lawyers; and gave numerous media

1 interviews. [Sep.St.No. 24-5.]

2 **ARGUMENT**

3 **A. Summary Judgment Or Summary Adjudication May Not Be Granted**
4 **If There Are Triable Issues As To Any Material Facts**

5 Summary judgment may only be granted if the moving party
6 demonstrates that there is no triable issue as to any material
7 fact and that the moving party is entitled to judgment. Code of
8 Civil Procedure Section 437c(c). In determining a motion for
9 summary judgment, the declarations of the moving party are to be
10 strictly construed. Rincon v. Burbank Unified School District
11 (1986) 178 Cal.App.3d 949, 955, 224 Cal.Rptr. 88. If the only
12 proof of a material fact offered in support motion for summary
13 judgment is a declaration made by an individual who was the sole
14 witness to the event or concerns as a the material fact the
15 witness' affirmation of his own state of mind, the court may in
16 its discretion deny the summary judgment motion on grounds of
17 credibility even if the non-moving party offers no other
18 contradictory evidence. C.C.P. § 437c(e).

19 It is undisputed that Armstrong conveyed his property to
20 Walton and the Gerald Armstrong Corporation in August, 1990, as
21 alleged in the Complaint, and that he received no monetary or
22 other consideration for those transfers. Triable issues of
23 material fact exist as to the material issues: (1) Whether at the
24 time of the transfer, Armstrong intended to incur, or believed or
25 reasonably should have believed that he would incur, debts to the
26 Church which were beyond his ability to pay, by breaching the
27 Agreement and (2) Whether Armstrong transferred the property with
28 the actual intent of rendering himself "judgment proof."

1 Armstrong's own admissions, Walton's admissions, and the
2 circumstances surrounding the transfers and the breaches create
3 questions of fact as to these issues. As demonstrated below,
4 plaintiff need only prove either that Armstrong reasonably
5 believed, or should have believed, that he was about to incur
6 debts to the Church that he could not pay or that he made the
7 transfers while actually intending to defraud the Church.
8 Plaintiff intends to prove both of these facts at trial.
9 Further, Armstrong's own declaration concerning his state of mind
10 is made suspect by his own earlier sworn testimony and
11 statements, and will not support a summary judgment. C.C.P.
12 3437c(e).

13 **B. Plaintiff Is Not Required To Prove That Armstrong Was**
14 **Insolvent At The Time He Conveyed His Assets To The Other**
15 **Defendants In Order To Establish A Fraudulent Conveyance**

16 Armstrong begins his summary judgment motion by setting up
17 and destroying a useless straw man: he argues that the Church
18 must prove that Armstrong's August, 1990 transfers rendered him
19 insolvent, then asserts that the Church cannot do so. [Moving
20 Papers at 2-3.] This analysis, while arguably relevant to the
21 pre-1986 cases which Armstrong cites, is simply irrelevant to the
22 fraudulent conveyance claim set forth by plaintiff under the
23 current statute.

24 In 1986, the Fraudulent Conveyance Act was given a
25 "statutory overhaul" by the Legislature. Reddy v. Gonzalez
26 (1992) 8 Cal.App.4th 118, 123, 10 Cal.Rptr.2d 55. In its current
27 form, section 3439.04 of the Civil Code sets forth "three types
28 of fraudulent conveyances which do not require proof of
insolvency." Id. at 123. It states:

1 A transfer made or obligation incurred by a debtor
2 is fraudulent as to a creditor, whether the creditor's
3 claim arose before or after the transfer was made or
4 the obligation was incurred, if the debtor made the
5 transfer or incurred the obligation as follows:

6 (a) With actual intent to hinder, delay, or
7 defraud any creditor of the debtor.

8 (b) Without receiving a reasonably equivalent
9 value in exchange for the transfer or obligation, and
10 the debtor:

11 (1) Was engaged or was about to engage in a
12 business or a transaction for which the remaining
13 assets of the debtor were unreasonably small in
14 relation to the business or transaction; or

15 (2) Intended to incur, or believed or reasonably
16 should have believed that he or she would incur, debts
17 beyond his or her ability to pay as they became due.

18 The Church's complaint in this action states fraudulent
19 conveyance claims which are based on two of the three prongs of
20 this section: section (a), and section (b)(2). Insolvency of
21 the debtor at the time of the transfer is not an element of
22 either claim. In Reddy v. Gonzalez, supra, a debtor argued to
23 the Court of Appeal that a creditor pursuing a claim under
24 section 3439.04 was required to prove both actual and
25 constructive fraud in order to recover. The Sixth District
26 rejected this analysis, and held that the combination of the
27 three types of fraudulent conveyances in a single section "did
28 not destroy their independence." Section 3439.04 instead
comprehensively sets forth three types of fraudulent conveyances
which do not require proof of insolvency."³

³ Under the newer statute, insolvency is still an element
of a claim being pursued under § 3439.05. That section renders a
transaction fraudulent as to a creditor to whom the debtor owed a
debt at the time of the transaction if the debtor made the
transfer "without receiving a reasonably equivalent value in
(continued...)

1 Armstrong's argument, and attempted proof, that he was not
2 rendered insolvent by the 1990 transfers is thus irrelevant. The
3 cases which he cites concerning constructive fraud and insolvency
4 all describe a statutory scheme that is no longer in effect.

5 **C. Plaintiff Has Demonstrated Material Issues Of Fact Which**
6 **Support Their Claim That Armstrong's Transfers To Walton and**
7 **GAC Violate Civil Code Section 3449.04(b) (2)**

8 Under plaintiff's first theory of recovery, Armstrong's
9 transfers to Walton and GAC may be set aside if Armstrong did not
10 receive "a reasonably equivalent value in exchange for the
11 transfer" from Walton, and Armstrong intended to incur, or
12 believed or reasonably should have believed that he would incur,
13 debts to the Church which were beyond his ability to pay, by
14 breaching the Agreement. C.C. 3439.04. According to Section
15 3439.03 of the act, "Value is given for a transfer or an
16 obligation if, in exchange for the transfer or obligation,
17 property is transferred or an antecedent debt is secured or
18 satisfied. . . ." This section is in accord with a long line of
19 California cases which have held that "fairness of consideration
20 is to be judged from the standpoint of the creditors of the
21 debtor." Legislative Committee Comment, 1986, Section (2). The
22 Legislative Committee notes further instruct that:

23 "Value" is to be determined in light of the
24 purpose of the Act to protect a debtor's estate from
25 being depleted to the prejudice of the debtor's
26 unsecured creditors. Consideration having no utility
27 from a creditor's viewpoint does not satisfy the

28 ³(...continued)

exchange for the transfer" and "the debtor was insolvent at that
time or the debtor became insolvent as a result of the transfer."
Armstrong correctly surmises that the Church is not pursuing its
claim as one arising under § 3439.05.

1 statutory definition. The definition does not specify
2 all the kinds of consideration that do not constitute
3 value for the purposes of this Act -- e.g., love and
4 affection.

5 Id. (emphasis supplied).

6 Armstrong has admitted that, when Armstrong conveyed his
7 property to Walton in 1990, Armstrong received no money,
8 property, promise or other consideration in return. [Sep.St.No.
9 24-3.] In his Separate Statement, Armstrong asserts that he
10 received a spiritual benefit from the act of giving away his
11 property. [Armstrong's Sep.St.Nos. 18 - 20.] Even assuming that
12 Armstrong did obtain spiritual satisfaction from giving his
13 assets to his friends, that satisfaction is not "value" within
14 the meaning of the Fraudulent Conveyances Act, because it cannot
15 be exchanged with his creditors. This element of plaintiff's
16 claim is thus undisputed, but in favor of judgment for plaintiff.

17 The second necessary element -- whether Armstrong intended
18 to incur the debt to the Church and knew or reasonably should
19 have known that such a debt would be beyond his ability to pay --
20 presents a substantial issue of fact to be decided at trial.
21 Armstrong has admitted, repeatedly and under oath that, as early
22 as fall of 1989, he intended to breach the Agreement. [Sep.St.No.
23 23.] The terms of the Agreement were plain on their face that
24 each breach of the Agreement by Armstrong would result in a debt
25 to the Church, in the form of either consequential damages or
26 liquidated damages, depending on the nature of the breach.
27 [Sep.St.No. 1.] Every court which has thus far considered the
28 merits of the Agreement has determined that the Agreement is
 enforceable, and binding upon Armstrong. [Sep.St.No. 7-4.] In

1 the face of such clear language, and in light of these judicial
2 rulings, Armstrong's professed "belief" that the Agreement was
3 unenforceable, and that he would not become indebted to the
4 Church for each breach is not reasonable and indeed irrelevant.
5 In fact, he did proceed to breach the Agreement repeatedly, and
6 he also complained that he was without financial resources.
7 [Sep.St.Nos. 7, 24-5.] These facts certainly give rise to an
8 inference that Armstrong knew, or reasonably should have known,
9 that he was incurring a debt which he could not pay. At the very
10 least, the circumstances of the Agreement, the transfer, and the
11 subsequent repeated breaches raise a substantial question of
12 material fact which cannot be determined by summary judgment.
13 The existence of this controversy alone is sufficient to mandate
14 denial of Armstrong's motion.

15 **D. The First Amendment Does Not Preclude Inquiry Into The**
16 **Fraudulent Nature of Armstrong's Transfers To Walton And GAC**

17 "Whether a conveyance is made with actual intent to defraud
18 creditors is not a question of law, but one of fact to be
19 determined by the trial court." T W M Homes, Inc. v. Atherwood
20 Realty & Investment Co. (1963) 214 Cal.App.2d 846, 29 Cal.Rptr.
21 887, 897. Armstrong attempts to avoid this well-established
22 principle by arguing that the Church may not prove that Armstrong
23 made the transfers to Walton and GAC with the actual intent to
24 hinder the Church's future collection of debts that he intended
25 to incur, Civ.Code 3439.04(a), because to do so would require the
26 Court to evaluate the truth or falsity of Armstrong's religious
27 belief. [Moving Papers at 9-14.] Armstrong asserts, in effect,
28 that his belief that he was guided by God to make the transfers

1 negates any inference that he had an intent to defraud the
2 Church, and may not be challenged without running afoul of the
3 First Amendment. Armstrong's argument complicates and misstates
4 both basic First Amendment law and the requirements of the
5 Fraudulent Conveyances Act.

6 Although the courts have long held that freedom of belief is
7 absolute, they have also held that freedom of conduct is not.

8 It is well-established that the absolute constitutional
9 protection afforded freedom of religious belief does not
10 extend without qualification to religious conduct. Braunfeld
11 v. Brown, 366 U.S. 599, 603, 81 S.Ct. 1144, 1145, 6 L.Ed.2d
12 563 (1961); Cantwell v. Connecticut, 310 U.S. 296, 303-04,
13 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). When a law is
14 challenged as interfering with religious conduct, the
15 constitutional inquiry involves three questions: (a) whether
the challenged law interferes with free exercise of a
religion; (b) whether the challenged law is essential to
accomplish an overriding governmental objective; and (c)
whether accommodating the religious practice would unduly
interfere with fulfillment of the governmental interest. See
United States v. Lee, 455 U.S. 252, 256-59, 102 S.Ct. 1051,
1054-56, 71 L.Ed.2d 127 (1982).

16 United States v. Rush (1st Cir. 1984) 738 F.2d 497 (Holding that
17 defendants could not avoid conviction for possession of marijuana
18 with intent to distribute on grounds that smoking marijuana was
19 an integral part of their religious practice). See also, Molko v.
20 Holy Spirit Assn. (1988) 45 Cal.3d 1092, 252 Cal.Rptr. 122
21 (Secular court could determine whether religious group was guilty
22 of fraud even though group claimed that fraudulent
23 representations were religiously motivated).

24 Here, it should be noted first that the determination which
25 must be made pursuant to the Fraudulent Conveyances Act does not
26 impact on Armstrong's claimed religious exercise at all.
27 Armstrong claims only that it is his religious belief that, in
28 August, 1990, God told him to give away his worldly wealth.

1 [Sep.St.No. 13] Had Armstrong simply given away his property,
2 without subsequently breaching his Agreement and injuring the
3 Church, his claimed religiously-motivated conduct would not run
4 afoul of the Fraudulent Conveyances Act, and would not be the
5 subject of any governmental interest at all. Armstrong does not
6 claim, after all, that it is his belief that God also directed
7 him to enter into the Agreement with the Church in 1986, accept
8 \$800,000 in settlement, and breach the Agreement repeatedly after
9 he had comported with God's claimed wish that he give away his
10 assets.

11 Nor does the Fraudulent Conveyance Act require that the
12 Church prove that Armstrong did not actually believe that he
13 received a directive from God to give away his assets in order
14 for the Church to demonstrate that, at the time he conveyed the
15 property, Armstrong also intended to hinder, delay or defraud the
16 collection activities of the Church, which he expected would
17 follow as a matter of course once he began breaching the
18 Agreement. The belief, on the one hand, and the intention, on
19 the other, are simply not mutually exclusive.

20 The Church's proof of Armstrong's actual intent in effecting
21 the transfers will of necessity be made by reference to the
22 circumstances surrounding the transfers.

23 [B]ecause of the nature of an action to set aside a
24 conveyance, direct proof of the fraudulent intent of the
25 parties is often impossible. For this reason, and because
26 the intent of the parties and facts of the transaction are
27 peculiarly within the knowledge of those sought to be
28 charged with fraud, proof must come by inference from the
circumstances surrounding the transaction and the
relationship and interests of the parties. Indicia of fraud
that might be insufficient when considered separately may,
by their number and association when considered together,
suffice as strong evidence of fraudulent intent.

1 In re Liquimatic Systems, Inc. (S.D.Cal. 1961) 194 F.Supp.625
2 (citations omitted).

3 Indicia, or "badges" of fraud, which should be considered by
4 the Court in determining whether or not Armstrong intended to
5 defraud, hinder or delay his creditors at the time that he
6 transferred his assets include:

7 (a) Whether the transfer or obligation was to an insider,
8 Johnson v. Drew (1963) 218 Cal.App.2d 614, 32 Cal.Rptr. 540
9 (mother); Menick v. Goldy (1955) 131 Cal.App.2d 542, 280 P.2d 844
10 (daughter); Heath v. Helmick (9th Cir. 1949) 173 F.2d 157
11 (physician and confidant); [**Armstrong transferred the property to**
12 **Walton, his attorney, confidant and roommate.** Sep.St.Nos. 14,
13 24-4, 24-5];

14 (b) Whether the debtor retained possession or control of the
15 property transferred after the transfer, Legislative Committee
16 Comment to Civ.Code §3439.04, 1986, (5)(b); [**Armstrong continued**
17 **to live in the house after he transferred it to Walton, and**
18 **continued to direct the affairs of the corporation after he gave**
19 **away its stock.** Sep.St.Nos. 24-4, 24-6];

20 (c) Whether the debtor was sued or threatened with suit
21 before the transfer was made or obligation was incurred, Economy
22 Refining & Service Co. v. Royal National Bank of New York (1971)
23 20 Cal.App.3d 434, 97 Cal.Rptr. 706; Johnson v. Drew, supra;
24 Menick v. Goldy, supra. [**Armstrong claims that he was told by one**
25 **of the Church's attorneys in October, 1989, that he would be sued**
26 **if he breached the Agreement.** Sep.St.No. 24-7];

27 (d) Whether the transfer was of substantially all the
28 debtor's assets, Burrows v. Jorgensen (1958) 158 Cal.App.2d 644,

1 323 P.2d 150 [Armstrong claims that he gave away all of his
2 **worldly wealth.** Sep.St.Nos. 14-17];

3 (e) Whether the value of the consideration received by the
4 debtor was reasonably equivalent to the value of the assets
5 transferred, Legislative Committee Comment to Civ.Code §3439.04,
6 1986, (5)(h); [**Armstrong received no consideration for the house,**
7 **cash and other assets which he transferred.** Sep.St.No. 24-3]; and

8 (f) Whether the transfer occurred shortly before or shortly
9 after a substantial debt was incurred, Legislative Committee
10 Comment to Civ.Code §3439.04, 1986, (5)(j); [**Armstrong commenced**
11 **wholesale breaches in July 1991 with a trip to South Africa and,**
12 **by February, 1992, had committed enough breaches to incur a debt**
13 **of at least \$ 1,800,000.** Sep.St.No. 24-5].

14 The religious beliefs of the debtor, Armstrong, are not
15 material to any of these indicia of fraud, nor do they serve to
16 negate the inferences that could, by a trier of fact, be made
17 from them.

18 Moreover, even assuming arguendo that Armstrong could
19 persuade the Court that examination of these traditional badges
20 of fraud by a trier of fact would impact in some way on
21 Armstrong's exercise of his religious beliefs, the government's
22 interest in uniformly protecting the rights of judgment creditors
23 far outweighs any slight impact that such an examination could
24 have on Armstrong's religious conduct. "Government action
25 burdening religious conduct is subject to a balancing test, in
26 which the importance of the state's interest is weighed against
27 the severity of the burden imposed on religion." Molko v. Holy
28 Spirit Assn., supra, 46 Cal.3d at 1113.

1 Here, the burden imposed on Armstrong's religious belief by
2 the Fraudulent Conveyance Act, if any, is slight. Indeed,
3 Armstrong's belief that God told him to divest himself of his
4 assets need not be affected by the Church's invocation of the
5 statute. If anything, the statute provides only that persons who
6 wish to follow religious dictates to completely divest themselves
7 of their assets can do so if they do not subsequently incur
8 substantial debt which they cannot repay. In contrast, the state
9 has a compelling interest in ensuring that the Fraudulent
10 Conveyance Act (which is an enactment of the Uniform Fraudulent
11 Transfer Act) is available to protect the rights of creditors,
12 and that persons may not avoid their debts simply by asserting
13 that their actions were heavenly-directed. A functioning state
14 and national economy is built on the principle that persons are
15 responsible for the debts which they incur, and that fraudulent
16 transfers may be set aside if the indicia of fraud are present.
17 If Armstrong were permitted to avoid responsibility for his debts
18 simply by assuring the Court that God had directed him to
19 transfer his assets, it is not unlikely that many others would
20 similarly attempt to avoid the payment of obligations which they
21 incurred. The state interest in preventing such a result is
22 substantial.

23 Molko also provides that,

24 A government action that passes the balancing test
25 must also meet the further requirements that (1) no
26 action imposing a lesser burden on religion would
27 satisfy the government's interest and (2) the action
28 does not discriminate between religions, or between
religion and non-religion.

46 Cal.3d at 1113.

1 Here, it is difficult to imagine a less-intrusive burden
2 that the government could place on Armstrong's actions and still
3 ensure that judgment creditors may collect their debts. The
4 statute does not require Armstrong to prove the truth or falsity
5 of his belief, nor need it be an issue. Had Armstrong not
6 incurred debt after divesting himself of his assets, no state
7 action would have been taken at all. Armstrong is freely
8 permitted by the state to transfer his property for whatever
9 reason he pleases; he simply may not avoid legal debts by doing
10 so.

11 Moreover, the regulation of the activity is not a government
12 function, but merely the adjudication of a private dispute
13 brought by a discretely wronged creditor. No intrusive
14 government scheme exists to regulate religiously motivated
15 transfers of assets unless the transfers negatively affect the
16 rights of creditors.

17 Finally, the Fraudulent Conveyances Act is a religiously
18 neutral statute. It neither regulates nor prescribes religious
19 conduct, and it certainly does not discriminate between
20 religions.

21 In short, whether this Court views the test for actual
22 intent to defraud promulgated under the Fraudulent Conveyance Act
23 as imposing no burden on Armstrong's free exercise of religion,
24 or only a slight burden on that free exercise, the state's
25 interest far outweighs the claimed burden, and the statute should
26 be enforced against Armstrong. As demonstrated above, the test
27 may be applied by reference to religiously-neutral factors, and
28 the Church has demonstrated that, using those factors, a material

1 issue of fact exists as to whether Armstrong's transfers were
2 actually intended to defraud the Church. Under these
3 circumstances, summary judgment must be denied.

4 **E. Armstrong's Argument That Adjudication Of This Case Would**
5 **Violate The Establishment Clause Is Frivolous**

6 Armstrong's final argument assumes that the Church's
7 scripture demands that it pursue litigation against Armstrong,
8 and then asserts that for the Court to permit the Church to
9 litigate against Armstrong would "establish" the Church's
10 religion at the expense of Armstrong's. This argument has no
11 merit.

12 First, the Church has no scripture which demands, dictates
13 or otherwise instructs the Church to sue Gerald Armstrong.
14 [Sep.St.Nos. 26 - 51.] Armstrong's reliance on piecemeal
15 quotations from long-cancelled policy letters is erroneous. Id.
16 They have been interjected into this case solely in an attempt to
17 prejudice the Court, a tactic frequently employed by anti-Church
18 litigants which Armstrong's former colleague, Vicki Aznaran,
19 describes in detail in an accompanying declaration. [Sep.St.No.
20 33.]

21 Second, even if Church scripture did dictate that the Church
22 should bring a claim against Armstrong, for the Court to
23 entertain such a claim, in a secular court, seeking secular
24 relief, and based on a secular statute, could not possibly amount
25 to an establishment of any religion. The Church seeks, here and
26 in Los Angeles, to obtain that for which it bargained in 1986.
27 Armstrong received \$800,000 from the Church. The Church is
28 entitled to receive the benefits of its bargain, regardless of

1 its religious beliefs, and regardless of Armstrong's
2 mischaracterization of those beliefs.

3 Armstrong's motion for summary judgment on this frivolous
4 ground must be denied.

5 **CONCLUSION**

6 Armstrong has argued that he is entitled to summary judgment
7 on the Church's fraudulent conveyance action because he was not
8 insolvent at the time of the alleged transfers, because he
9 believes God told him to transfer away his property, and because
10 he thinks that Scientology scripture requires the Church to sue
11 him. As has been demonstrated, none of these remarkable defenses
12 negate the Church's case of fraudulent conveyance. Moreover, the
13 Church has provided evidence which demonstrates that material
14 issues of fact exist as to each element of plaintiff's claims
15 (except for those which plaintiff's evidence conclusively proves
16 in favor of plaintiff). Armstrong's motion for summary judgment
17 or alternatively summary adjudication must therefore be denied.

18 Dated: August 26, 1994

Respectfully submitted,

19 BOWLES & MOXON

20
21 BY: 

Laurie J. Bartilson

22
23 Andrew H. Wilson
WILSON, RYAN, & CAMPILONGO

24 Attorneys for Cross-
25 Defendant
CHURCH OF SCIENTOLOGY
26 INTERNATIONAL
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of _____, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is _____

On August 26, 1994, I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO GERALD ARMSTRONG'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES on interested parties in this action,

- by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;
- by placing the original true copies thereof in sealed envelopes addressed as follows:

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